THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 15603 of 2006

DATE: 02-03-2007

Between :

Sri Bhagyalakshmi Industries,
PAR Boiled Driers, Kesamudram,
Rep., by its Managing Partner,
Warangal District.

... Petitioner

And

The Andhra Bank,
Rep., by its Branch Manager,
Warangal and 2 others.

... Respondents

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O R D E R:

The petitioner firm which is running a rice mill, borrowed Rs.96,00,000/- from the first respondent-Bank in the year 1999. It is not in dispute that the petitioner had committed default in repayment of loan and consequently its account was classified as Non-Performing Asset (NPA). Pursuant thereto, the first respondent-Bank issued a notice dated 24-11-2005 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') calling upon the petitioner to pay a sum of Rs.52,52,000/- outstanding as on 30-9-2005 together with subsequent interest within 60 days failing which they would proceed against mortgaged/hypothecated properties to recover the amounts due, without intervention of the Court. On a request made by the petitioner assuring repayment of the amounts due, though no coercive steps were taken immediately, the first respondent-Bank by letter dated 31-3-2006 informed the petitioner its proposal to classify the petitioner as "willful defaulter" and advised the petitioner to make a representation, if any, within 15 days. In pursuance thereof, the petitioner paid a sum of Rs.8,00,000/- on 19-4-2006 by demand draft and promised to pay a further sum of Rs.7,00,000/- in the last week of April 2006.

In the meanwhile, the 2nd respondent – Collector and District Magistrate, Warangal District in exercise of powers conferred under

Section 14 of the Act passed an order dated 10-4-2006 authorising the 3rd respondent – Mandal Revenue Officer to take possession of the mortgaged properties within a week and hand over the same to the 1st respondent Bank.

Aggrieved by the said action, the petitioner filed W.P.No.9608 of 2006 contending that the action of the Collector and District Magistrate in passing the order dated 10-4-2006 under Section 14 of the Act without issuing any notice to the petitioner is arbitrary and illegal. The said writ petition was disposed of by this court by order dated 2-5-2006 holding that the contention of the petitioner that the order passed under Section 14 of the Act was invalid on account of non-issuance of notice was misconceived. However, having regard to the willingness expressed by the petitioner to pay the entire amount to the secured creditor within a short time, this Court granted liberty to the petitioner to make a representation to the secured creditor requesting time for making such payment and directed the Bank to consider such representation appropriately.

Thereafter, this writ petition was filed on 26-7-2006 alleging that in spite of the order of this Court in W.P.No.9608 of 2006 the 1st respondent Bank has not taken any decision on the petitioner's representation dated 19-4-2006 and in the meanwhile the 3rd respondent has been trying to seize the petitioner's rice mill in pursuance of the order passed under Section 14 of the Act.

Thus, a Writ of Mandamus has been sought as under :

> *".. ... may be pleased to issue Writ, Order or Direction more particularly one in the nature of WRIT OF MANDAMUS, declaring the action of the 1st respondent making a request through letter dated 18.2.2006 to the 2nd respondent requesting him to seize the rice mill without issuing any notice under Section 13 (4) of the Securitisation Act and also without issuing notice under Rule 8 of Securitisation Rules as illegal, arbitrary and contrary to the Securitisation Act and the Rules made thereunder and further declare that the proceedings of*

the 2nd respondent bearing No.A7/870/2006, dated 10-4-2006 is illegal, mala fide and arbitrary and contrary to the Act and consequently direct the 1st and 2nd respondents not to proceed illegally to seize the petitioner rice mill, and to grant such other relief or reliefs as this Hon'ble Court may deems fit and proper in the circumstances of the case."

Though it is contended by the learned Counsel for the petitioner that since substantial amounts have been paid by the petitioner the 1st respondent Bank is not justified in not allowing the petitioner to operate the rice mill, as could be seen from the prayer extracted above, virtually the challenge in this writ petition is to the order passed by the 2nd respondent dated 10-4-2006 under Section 14 of the Act. The same grounds which were raised in W.P.No.9608 of 2006 have been urged in this writ petition contending that the seizure of the rice mill pursuant to the order of the 2nd respondent without issuing notice under Section 13 (4) of the Act is arbitrary and illegal.

This Court has already rejected the said contention in W.P.No.9608 of 2006 and the said order has become final. Hence, it is not open to the petitioner to reagitate the said issue and therefore on that ground alone this writ petition is liable to be dismissed in limini.

Even with regard to the contention raised by the petitioner that the 1st respondent Bank is not justified in seizing the rice mill without passing any order on its representation dated 19-4-2006 is concerned, it is to be noted that even a copy of the representation said to have been made by the petitioner pursuant to the order of this Court has not been placed before this Court and what is the offer made by the petitioner is not known. That apart, the fact remains that even though more than six months elapsed from the date of the said representation the petitioner could not discharge the loan availed

by it and according to the 1st respondent Bank still substantial amounts are due. If that be so, it is always open to the 1st respondent-Bank to take appropriate steps for recovery of the amounts due following due process of law.

The mere pendency of the petitioner's representation requesting time to clear the entire loan cannot be held to be a bar to invoke the remedy provided under the Act. On the basis of the material placed before this Court absolutely no case is made out to show that the impugned action of the respondent is in contravention of the provisions of the Act or the Rules made thereunder. Hence, interference by this Court is not warranted on any ground whatsoever.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt: 02-03-2007
KLP